January 11, 2006

The Honorable Arlen Specter, Chair
The Honorable Patrick J. Leahy, Ranking Member
Senate Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, DC 20510

Re: Nomination of Judge Samuel A. Alito, Jr., as Associate Justice of the Supreme Court of the United States

Dear Chairman Specter and Senator Leahy:

The American Association for Affirmative Action (AAAA), an association of equal employment opportunity (EEO), diversity and affirmative action professionals founded in 1974, respectfully urges you to oppose the nomination of Judge Samuel Alito, nominated to serve as Associate Justice of the U.S. Supreme Court.

AAAA has reached this conclusion based on Judge Alito's very troubling record on equal employment opportunity and affirmative action. In his 1985 application to be the Reagan Administration's Deputy Assistant Attorney General in the Office of Legal Counsel, Samuel Alito expressed his support of the "same philosophical views" that he believed were central to the Administration. In this application, Alito highlighted his work as Assistant Solicitor General on affirmative action and reportedly wrote that he was "particularly proud" of his "contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed …." To use Judge Alito's "Hank Aaron" analogy, affirmative action requires not moving the fence in but opening the gate. After that, it is up to the player to demonstrate his or her abilities. Whoever selected Hank Aaron, Secretary Rice or Justice O'Connor understood that the essence of affirmative action is *opportunity*, not favoritism or quotas.

Judge Alito's application described the efforts of the Reagan Justice Department to restrict affirmative action and court-awarded remedies for discrimination as "quota" litigation. In one such case, Alito signed a brief arguing for restricting affirmative action remedies, even in cases where discrimination was intentional, egregious, and long-standing. In *Local 28 of the Sheet Metal Workers' International Ass'n v. EEOC,* the Solicitor General's brief advanced the extraordinary theory that relief in Title VII cases

could be granted only to "identifiable victims of discrimination," contradicting an earlier view of the EEOC itself. The Supreme Court rejected this argument.

In *Local Number 93, International Association of Firefighters, AFL-CIO v. City of Cleveland*, Alito signed on to an *amicus* brief seeking to reverse a consent decree that included numerical goals for the promotion of black firemen. By a 6-3 vote, the Supreme Court again rejected the Solicitor General's argument and upheld the affirmative action plan.

In the months before Alito applied for a job with Attorney General Edwin Meese, Meese waged a fierce campaign to have President Reagan abolish Executive Order 11246, signed by President Lyndon Johnson in 1965. The Order requires that federal contractors not discriminate in employment and that they use affirmative action. Ultimately, two-thirds of the Reagan cabinet repudiated the extreme views of the Justice Department and a coalition of corporations, members of Congress and civil rights organizations successfully defeated Meese's campaign against affirmative action.

There is nothing subsequent to Mr. Alito's tenure in the Reagan Administration *or his testimony before the Senate Judiciary Committee* to suggest persuasively that he has moderated his views on equal opportunity law enforcement. In civil rights cases he has often argued for higher barriers that victims of employment discrimination would have to overcome to secure remedies for such discrimination. For example, in *Bray v. Marriott Hotels*, Judge Alito's colleagues said Title VII of the Civil Rights Act of 1964 "would be eviscerated" if Judge Alito's approach were followed. In *Nathanson v. Medical College of Pennsylvania*, Judge Alito dissented in a disability rights case where the majority said: "Few if any Rehabilitation Act cases would survive" if Judge Alito's view were the law." And in *Sheridan v. DuPont*, he was the only one of 11 judges on the court who would apply a higher standard of proof in a sex discrimination case.

According to a report of the NAACP Legal Defense and Educational Fund, Inc., Judge Alito has almost never ruled for an African-American plaintiff in employment discrimination cases and has never written a majority opinion for the Third Circuit in favor of an African-American plaintiff on the merits of a claim of race discrimination in employment. In each majority opinion authored by Judge Alito and addressing such a claim, he has ruled against the African-American plaintiff.

This is not the time for the Judiciary, a longstanding refuge for victims of discrimination, to reverse fifty years of progress. The record emerging suggests that Judge Samuel Alito is not prepared to interpret the laws on behalf of *all* Americans.

Sincerely,

Shirley J. Wilcher

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Interim Executive Director

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